(36)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 220 of 2005

Appellant		United India Insurance Company Ltd, through Branch Manager, Branch Office Rajendra Nagar Chowk, Bilaspur, Tahsil and District- Bilaspur (C.G.).
	Versus	
Respondents	1.	Smt. Jayanti Lal aged 33 years, Wd/o Late Dr. Anil Lal
	2.	Ankit Kumar Lal, aged 10 years, S/o Late Dr. Ankit Kumar Lal, aged 10 years, S/o Late Dr. Anil Lal, through mother Smt. Jayanti Lal.
	3.	Ku. Akansha Lal, age 8 years, S/o Late Dr.Anil Lal, minor, through mother Smt. Jayanti Lal, all R/o Shridha Bhawan, Magarpara Road, Bilaspur, Tahsil and District- Bilaspur.
	4.	Gorelal S/o Banalo Yadav, aged 28 years, R/o Village- Phulwari, Lormi, Present R/o Quarter No. 2/18, Rajkishore Nagar, Bilaspur, Tahsil & District- Bilaspur (C.G.).
	5.	Anand Jayaswal S/o Radhe Shyam Jayaswa, aged 40 years, R/o Masanganj, Bilaspur, Tahsil & District- Bilaspur (C.G.).
	6.	National Insurance Company Ltd. Through Branch Manager, Bilaspur Branch, Taha Complex, Vyapar Vihar Road, Priyadarshni Nagar,Bilaspur.
	7.	Dr. S. K. Lal S/o S. B. Lal, aged 50 years, R/o Magarpara Chowk, Bilaspur, Tahsil & District- Bilaspur

DB: Hon'ble Shri Justice S. R. Nayak, C.J.
& Hon'ble Shri Justice Satish K. Agnihotri, J.

Mr. H. B. Agarwal, Senior Advocate with Shri Pankaj Agarwal, Advocate.

ORAL ORDER

(28th November 2005)

1. This appeal is preferred by the United India Insurance Company Ltd. The appellant-company is insurer of the motor car in which the deceased were traveling.

2. The Tribunal having appreciated the oral and documentary evidence adduced by the parties has recorded a specific finding that the driver of the motor car was negligent in driving the car and in causing the accident resulting in death of three persons. This factual finding recorded by the Tribunal cannot be condemned for want of legal evidence. It was also found by the Tribunal that not only the driver of the car was guilty of actionable negligence but even the driver of the truck (another vehicle) involved in the accident was also negligent in parking the vehicle without light. The Tribunal has apportioned the liability of paying compensation between the two Insurance Companies. The factual finding recorded by the Tribunal on the issue relating to actionable negligence, in our considered opinion, is well-founded and based on substantive legal evidence and it does not warrant any interference by us. It needs to be noticed that even assuming that on the basis of the evidence, another plausible view is possible, even then, the appellate Court should not upset the factual finding recorded by the first Court if that finding is also possible on the basis of the legal evidence on record. No case is made out warranting our interference with the finding recorded by the Tribunal on the issue. The appeal is merit-less and it is accordingly dismissed with no costs.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge

akur